

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JENNIFER LUNDGREN

Plaintiff

07 CIV 4534

against

ANSWER

SEAN G. JULIUS and SHARON L.  
DAVIS

Defendants Demand  
A Jury Trial

Defendants

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The defendants, SEAN G. JULIUS and SHARON L. DAVIS by their attorneys, LEAHEY & JOHNSON, P.C., answering the complaint of the plaintiff herein, upon information and belief, respectfully allege:

PARTIES

FIRST: Deny knowledge or information thereof sufficient to form a belief as to all the allegations contained in the paragraphs designated "1" and "2" of the plaintiff's complaint.

JURISDICTION

SECOND: Deny each and every allegation contained in the paragraph designated "6" of the plaintiff's complaint.

THIRD: Deny each and every allegation contained in the paragraphs designated "7" and "8" and beg leave to refer all questions of law to the court at the time of trial.

BACKGROUND

FOURTH: Deny each and every allegation contained in the paragraphs designated "9", "13", "14", "15", "16", "17" and "18" of the plaintiff's complaint.

FIFTH: Deny knowledge or information thereof sufficient to form a belief as to all the allegations contained in the paragraphs designated "11" and "12" of the plaintiff's complaint.

AS AND FOR AN ANSWER TO  
THE FIRST CAUSE OF ACTION

SIXTH: Deny each and every allegation contained in the paragraph designated "19" and begs leave to refer all questions of law to the court at the time of trial.

SEVENTH: Deny each and every allegation contained in the paragraphs designated "20", "21" and "22" of the plaintiff's complaint.

AS AND FOR AN ANSWER TO  
THE SECOND CAUSE OF ACTION

EIGHTH: Defendants, SEAN G. JULIUS and SHARON L. DAVIS answering paragraph "23" repeat, reiterate and reallege each and every denial and admission concerning paragraphs "1" through "22", inclusive, of the plaintiff's complaint in the answer thereto with the same force and effect as though fully set forth at length.

NINTH: Deny knowledge or information thereof sufficient to form a belief as to the allegation contained in the paragraph designated "24" of the plaintiff's complaint.

TENTH: Deny each and every allegation contained in the paragraphs designated "25" and "26" of the plaintiff's complaint.

AS AND FOR AN ANSWER TO  
THE THIRD CAUSE OF ACTION

ELEVENTH: Defendants, SEAN G. JULIUS and SHARON L. DAVIS answering paragraph "27" repeat, reiterate and reallege each and every denial and admission concerning paragraphs "1" through "26", inclusive, of the plaintiff's complaint in the answer thereto with the same force and effect as though fully set forth at length.

TWELFTH: Deny each and every allegation contained in the paragraphs designated "28" and "30" and beg leave to refer all questions of law to the court at the time of trial.

THIRTEENTH: Deny each and every allegation contained in the paragraphs designated "29", "31", "32" and "33" of the plaintiff's complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FOURTEENTH: In the event of a verdict or judgment Article 50-B of the CPLR applies.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FIFTEENTH: These answering defendants allege, upon information and belief, that whatever injury and damage were sustained by the plaintiff at the time and place alleged in the complaint were in whole or in part the result of the culpable conduct of the plaintiff, including assumption of risk.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SIXTEENTH: In the event that a settlement occurs, all of the provisions of General Obligations Law 15-108 are applicable.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

SEVENTEENTH: That the plaintiff did not use the seat belts therein provided and that the damage claimed to have been sustained were caused by the lack of use of the seat belts, and she did not avail herself of the protection device to mitigate the injury herein in accordance with the decision of SPIER V. BARKER, 35 N.Y.2d 444.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

EIGHTEENTH: That the plaintiff by not fastening the available automobile seat belts acted unreasonably and disregarded her own best interest and, accordingly, contributed to the happening of this accident in accordance with the decision of SPIER V. BARKER, 35 N.Y.2d 444.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

NINETEENTH: That the plaintiff has failed to sustain serious injury pursuant to 5102(d) of the Insurance Law of the State of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

TWENTIETH: The acts alleged were the acts of a person other than these answering defendants.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

TWENTY-FIRST: The plaintiff failed to mitigate damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: These answering defendants are entitled to a reduction in damages for any amounts plaintiff has received as collateral source payment as defined and applied by the Civil Practice Law and Rules.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: These answering defendants' responsibility, if any, and which is expressly denied herein, is less than 50% of any responsibility attributable to any tortfeasor who is or may be responsible for the happening of the plaintiff's alleged accident, whether or not a party hereto, and as such, these parties are entitled to a limitation of damages as set forth in CPLR Article 16.

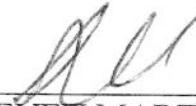
WHEREFORE, the defendants, SEAN G. JULIUS and SHARON L. DAVIS demand judgment dismissing the plaintiff's complaint them with the costs and disbursements of this action and further relief as to this Court may seem just and

proper in the premises.

Dated: New York, New York  
June 28, 2007

Yours, etc.,

LEAHEY & JOHNSON, P.C.  
Attorneys for Defendants  
SEAN G. JULIUS and  
SHARON L. DAVIS  
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New York, New York 10005  
(212) 269-7308

BY: 

STEVEN MARTIN  
SM: 5200

TO:

Baker, Leshko, Saline & Blosser, LLP  
Attorneys for Plaintiff  
One North Lexington Avenue  
White Plains, New York 10601

CERTIFICATE OF SERVICE

I, hereby certify that on June 28, 2007 of a true and correct copy of:

ANSWER

was served upon opposing counsel by depositing it in the United States mail in a properly addressed envelope with sufficient postage, addressed as follows:

TO:

Baker, Leshko, Saline & Blosser, LLP  
One North Lexington Avenue  
White Plains, New York 10601

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BY: \_\_\_\_\_

  
STEVEN MARTIN  
SM: 5200